

ENTERED

January 02, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

CECIL DEMMERIT BANKS,

Petitioner,

VS.

LORIE DAVIS,

Respondent.

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CIVIL ACTION NO. 2:17-CV-386

OPINION AND ORDER OF TRANSFER

This is a habeas action filed by a state prisoner incarcerated at TDCJ-CID's McConnell Unit in Beeville, Texas (D.E. 1). In this case, Petitioner challenges a 1996 unspecified First Degree Felony conviction imposed by the State District Court in Tarrant County, Texas (*Id.*). Petitioner contends that since his judgment is void, he is not in the lawful custody of Defendant Davis (*Id.*). While Petitioner makes that argument in his petition, it does not change the fact that he is presently in Defendant Davis's custody, and he is challenging the sentence resulting from his conviction in the state courts. 28 U.S.C. § 2254, 2241).

A habeas action may be filed either in the district where petitioner is in custody or in the district in which petitioner was convicted. 28 U.S.C. § 2241(d); Wadsworth v. Johnson, 235 F.3d 959 (5th Cir. 2000). Petitioner's place of incarceration is in Bee County, in the Corpus Christi Division of the Southern District of Texas. 28 U.S.C. § 124(b)(6), and he was convicted by a court located in the Fort Worth Division of the Northern District of Texas. 28 U.S.C. § 124(a)(2).

For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought. 28 U.S.C. §§ 1404(a) and 1406(a). A habeas application may be transferred in furtherance of justice to the district court within which the State court was held which convicted and sentenced the petitioner. 28 U.S.C. § 2241(d). Because petitioner was convicted in Tarrant County, it is more convenient and would further the interests of justice for this action to be handled in the Fort Worth Division of the Northern District of Texas. The records of his conviction, the court, the prosecutor and defense lawyer, and the witnesses are all located in the Fort Worth Division of the Northern District of Texas.

Accordingly, it is ordered that the Clerk of the Court TRANSFER this action to the United States District Court for the Northern District of Texas, Fort Worth Division. All pending motions are denied as moot and subject to renewal after the case is transferred.

ORDERED this 2nd day of January, 2018.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE